

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re)	Case No. 04-34629-C-7
)	
DAVID B. PETERSEN and)	MC No. PDM-1
Vicki G. PETERSEN,)	
)	
Debtors.)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON MOTION FOR RELIEF FROM AUTOMATIC STAY**

These findings of fact and conclusions of law are rendered in this contested matter pursuant to Federal Rule of Civil Procedure 52 as incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014.

Jurisdiction

Jurisdiction is founded upon 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(G).

Findings of Fact

Debtors filed this voluntary chapter 7 petition on December 27, 2004. They scheduled real property commonly known as 31700 Transformer Road, Malin, Oregon ("the property") as property of the estate. The chapter 7 trustee filed a report finding that there is property available for distribution from the estate over and above that exempted by the debtor. The court observes that debtors were discharged from all dischargeable debts on March 31, 2005.

On March 1, 2005, Whidbey Island Bank("movant") filed a motion, notice, and declaration requesting that this court

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1 vacate the automatic stay to permit movant to foreclose upon
2 the property. Movant's motion requested attorneys' fees and
3 costs.

4 The value of the property is approximately \$200,000.
5 Movant holds a mortgage on the property in excess of \$166,000.
6 Debtors have equity in the property in excess of \$33,000 which
7 they claimed exempt.

8 On March 29, 2005, a hearing was held on movant's motion
9 for relief from stay and its requests for attorney's fees and
10 costs. Thereafter, the court continued the motion to April 26,
11 ²⁰⁰⁵ 2006. At the continued hearing, debtor appeared and stated
12 that the motion was filed shortly after he defaulted on two
13 payments. Debtor further requested an order denying movant's
14 request for attorneys' fees and costs. Thereafter, the court
15 concluded that it would resolve the relief from stay motion as
16 submitted and further continue the requests for attorneys' fees
17 and costs.

18 Conclusions of Law

19 The automatic stay of acts against the debtor in personam
20 and of acts against property other than property of the estate
21 will terminate when an individual in a case under chapter 7 is
22 granted a discharge. 11 U.S.C. § 362(c)(2)(C).

23 In this instance, debtors received a discharge on March
24 31, 2005. As such, the motion requesting relief from the
25 automatic stay as against the debtors shall be denied as moot
26 without prejudice. Moreover, the court observes that had the
27 court resolved the motion at the first hearing on March 29,
28 2005, the motion as to the debtors would have been denied

1 because there is equity in the property in excess of \$33,000.


2 Although, the chapter 7 trustee filed an asset report, the
3 trustee failed to file any opposition to the motion.

4 Therefore, the motion will be granted as to the trustee.

5 Additionally, the court will continue the hearing on
6 movant's request for attorneys' fees and costs to June 7, 2005.
7 Any party wishing to supplement the record may do so before May
8 31, 2005.

9 An appropriate order will issue.

10 Dated: April 26, 2005

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13 UNITED STATES BANKRUPTCY JUDGE
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